

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 2, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2486

Cir. Ct. No. 2012SC8901

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JOHNSON PARK LOFTS,

PLAINTIFF,

V.

GOLDA D. COLEMAN,

**DEFENDANT-THIRD-PARTY
PLAINTIFF-APPELLANT,**

V.

**HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,
THIRD-PARTY DEFENDANT-RESPONDENT.**

APPEAL from an order of the circuit court for Milwaukee County:
MARY M. KUHNMUENCH, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Golda Coleman appeals an order of the small claims court dismissing her third-party complaint against the Housing Authority of the City of Milwaukee (the Housing Authority) in an eviction action. We affirm.

BACKGROUND

¶2 Coleman was a resident of the Johnson Park Lofts (Johnson Park) in Milwaukee. Coleman's lease ran from November 1, 2010, to October 31, 2011, during which time Coleman received rent assistance from the Housing Authority, pursuant to Section Eight of the United States Housing Act. The Housing Authority paid Johnson Park \$739 a month as a housing assistance payment. Based on her income, Coleman was responsible for \$27 of her rent per month.

¶3 Coleman did not complete her annual re-certification with the Rent Assistance Program by October 31, 2011. Coleman received a letter informing her that she would be terminated from the program if she did not contact her case worker with the program by November 11, 2011. On November 7, 2011, Coleman paid a \$50 fee to schedule her re-certification appointment, however no appointment was made.² Coleman received a termination notice dated January 13, 2012, advising her that her termination applied retroactively with an effective date of October 31, 2011. Coleman requested a hearing pursuant to the notice; however, the Housing Authority did not provide Coleman a hearing.³

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² Coleman states in her brief-in-chief that the Housing Authority failed to give her another appointment. The Housing Authority does not dispute this contention on appeal.

³ Coleman makes this allegation in her brief. It is not disputed by the Housing Authority.

¶4 The Housing Authority stopped making payments to Johnson Park in November 2011, after Coleman's lease ended. Johnson Park sent Coleman an eviction notice dated January 9, 2012, for \$1850.50 in unpaid rent. The following month Coleman paid \$2700 to avoid eviction; however, Coleman again fell behind on her rent payments and received another eviction notice dated March 6, 2012. Johnson Park commenced an eviction action in small claims court on March 17, 2012.

¶5 Johnson Park's complaint contained three causes of action: (1) eviction; (2) wrongful holdover of the premises; and (3) money damages for any property damage caused by Coleman. Johnson Park also sought back-rent in the amount of \$602.50, and additional fees for each day Coleman failed to vacate the premises. Johnson Park and Coleman stipulated that Coleman would vacate the apartment by April 30, 2012, thereby stipulating as to the eviction cause of action. Coleman filed a third-party complaint naming the Housing Authority as a third-party defendant. An amended complaint alleged that the Housing Authority contracted with Johnson Park to assist with Coleman's rent pursuant to Section Eight of the United States Housing Act. The complaint also alleged that the Housing Authority terminated Coleman's benefits retroactively without proper notice or a hearing, thereby violating her due process rights pursuant to 42 U.S.C. § 1983,⁴ and that the Housing Authority was liable to Coleman for all or part of

⁴ The section provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable

continued

Johnson Park's claims.

¶6 The Housing Authority filed both an answer and a motion *in limine*, asking the small claims court to dismiss Coleman's civil rights claims, declare that WIS. STAT. § 803.05 limits Coleman's potential recovery to the amount sought by Johnson Park, and declare that it is not responsible for any property damage caused by Coleman.

¶7 The small claims court held oral argument on whether to dismiss Coleman's third-party complaint. After hearing arguments from Coleman and the Housing Authority, the small claims court dismissed Coleman's third-party complaint. The small claims court found that Coleman relied on an impermissible defense to an eviction action by arguing that the Housing Authority was responsible for the nonpayment of her rent. Specifically, the small claims court stated:

[W]hen you're impleading a third party and having a counterclaim against that third party, which is really used as a defense to why the party that has sued you isn't entitled to the relief against you or not entitled and just you to some other people as well. It still has to be a matter that is directly related to the underlying issue. The underlying issue in this case is nonpayment of rent.... Your proper defense is nonpayment of rent and that is a defense to an eviction action.... [S]aying there was a violation of their constitutional rights ... is clearly a separate action.

....

to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

When you're invoking property rights and certain due process requirements that even a government is required to go through and if you had that decision on the merits and if the[re] had been a decision that the City of Milwaukee Housing Authority on a separate action that you already brought against them had been decided and on the merits and you based on that already and had a court decision that said they were – the damages included any damages associated with what happened to the tenant as a result of the violation of the due process rights which are included, but not limited to being evicted, nonpayment of rent, damages for nonpayment of rent. All of those things would clearly set-up a nexus as to the valid defense that ... [the] City of Milwaukee Housing Authority is properly enjoined as a third party and are counterclaimed of all these damages.

....

At this point, ...[i]t is not intrinsic.... It is a collateral matter that has yet to be decided and the decision would very much impact what you could or could not do in the underlying or raise his[sic] defenses in the underlying eviction action.

(Some formatting altered.)

¶8 This appeal follows.

DISCUSSION

¶9 Coleman contends that the small claims court erroneously dismissed her third-party complaint because such complaints are explicitly permitted under WIS. STAT. ch. 799 and WIS. STAT. § 803.05(1). Coleman also contends that her due process claim, brought pursuant to 42 U.S.C. § 1983, was properly before the small claims court. Because the Housing Authority provided rent assistance for the duration of Coleman's lease, and because no contract on the record demonstrates that the Housing Authority was responsible for anything beyond Coleman's rent, we affirm the small claims court, albeit for different reasons. *See Lecander v. Billmeyer*, 171 Wis. 2d 593, 602, 492 N.W.2d 167 (Ct. App. 1992)

(We may affirm a small claims court’s decision even if the court reached its result for different reasons.).

Third-Party Complaint.

¶10 Coleman argues that because the Housing Authority was responsible for paying a portion of her rent, the Housing Authority was properly impleaded as a third-party defendant because Johnson Park’s claims, in essence, stem from Coleman’s failure to pay rent. We disagree.

¶11 A small claims court’s decision to dismiss an action is discretionary and will not be disturbed absent an erroneous exercise of discretion. *See Haselow v. Gauthier*, 212 Wis. 2d 580, 590-91, 569 N.W.2d 97 (Ct. App. 1997). We will sustain a discretionary act if the small claims court examined the relevant facts, applied the proper standard of law, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶12 Coleman argues that the Housing Authority was properly impleaded under the statutes governing small claims procedures and third-party complaints. WISCONSIN STAT. ch. 799 governs the underlying eviction action. WISCONSIN STAT. § 799.01, as relevant, states:

(1) EXCLUSIVE USE OF SMALL CLAIMS PROCEDURE. Except as provided in ss. 799.02(1) and 799.21(4) and except as provided under sub. (2), the procedure in this chapter is the exclusive procedure to be used in circuit court in the following actions:

....

(cr) *Third-party complaints, personal injury claims, and tort claims.* Third-party complaints, personal injury claims, and actions based in tort, where the amount claimed is \$5,000 or less.

¶13 WISCONSIN STAT. 799.04(1) makes the rules of civil procedure applicable to small claims proceedings.⁵ Thus, WIS. STAT. § 803.05, titled “Third-Party Practice,” is applicable to this case. As relevant, § 803.05(1) provides that a defendant may serve a summons and complaint upon a third-party defendant who “*may be liable to the defending party for all or part of the plaintiff’s claim.*” (Emphasis added.) In other words, under § 803.05(1), a defending party may implead a third-party if the third-party’s liability is dependent upon the outcome of the plaintiff’s claim.

¶14 Here, Johnson Park filed a complaint containing causes of action for eviction, wrongful holdover, and property damage. The eviction claim was dismissed pursuant to a stipulation that Coleman would vacate the premises by April 30, 2012. To the extent Johnson Park seeks late charges stemming from a holdover and compensation for property damage from Coleman, we conclude that the record before us does not establish a basis for the Housing Authority’s liability for these damages. The record does not contain a copy of the lease between Johnson Park and Coleman, nor does it contain a copy of the contract between Johnson Park and the Housing Authority. The only documents in the record show payment by the Housing Authority of a portion of the rent made during the term of Coleman’s lease. The Housing Authority fulfilled this obligation. Nothing on the record supports a finding that the Housing Authority would be liable to Coleman for the wrongful holdover and property damage claims made by Johnson Park.

⁵ The statute provides:

Except as otherwise provided in this chapter, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under this chapter. Any judicial proceeding authorized to be conducted under s. 807.13 may be so conducted in actions under this chapter.

Because WIS. STAT. § 803.05(1) permits third-party complaints only if the third-party defendant may be liable to the defendant “for all or part of the plaintiff’s claim,” we conclude that Coleman’s third-party complaint was properly dismissed. *See Duhamel v. Duhamel*, 154 Wis. 2d 258, 269, 453 N.W.2d 149 (Ct. App. 1989) (When the record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the small claims court’s ruling.).

Section 1983.

¶15 Coleman also contends that the small claims court was a proper venue for her 42 U.S.C. § 1983 claim against the Housing Authority because the wrongful termination of her benefits formed the basis of Johnson Park’s claims against Coleman. The Housing Authority concedes that small claims courts have jurisdiction to hear § 1983 claims, but argues that Coleman’s third-party complaint was not properly before the court. Assuming all of Coleman’s constitutional allegations in her third-party complaint are true and the Housing Authority violated her constitutional rights when it terminated her benefits, the record does not allow us to conclude that the small claims court erroneously exercised its discretion when it dismissed the third-party complaint.⁶ Coleman’s constitutional allegations are separate civil claims not involving in any way the Housing Authority’s liability to Johnson Park. Damages Coleman might receive for constitutional violations are personal to her, not Johnson Park or any other entity. Any liability the Housing Authority may have to Coleman would be for its conduct towards her; the record provides no basis to find the Housing Authority

⁶ We note, however, that the Housing Authority in its briefs before this court does not dispute Coleman’s allegations that it failed to provide Coleman with proper notice and a hearing as to its termination of her benefits.

liable for claims made by Johnson Park against Coleman because the record shows that the Housing Authority paid the rent supplements throughout the term of Coleman's lease.

¶16 For the forgoing reasons, we affirm the small claims court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

